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No. ~~298~~ 41

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 427, AFL, ET AL.,

Petitioners,

vs.

FAIRLAWN MEATS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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Downtown Needs a Lesson From the Suburbs, Business Week, Oct. 22, 1955, p. 64 23
Feldblum, Jurisdictional "Tidelands" in Labor Relations, 3 Labor Law Journal 114 22
How to Expand Shopping Center Zones, The American City, Jan. 1956, p. 116 23
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Petitioners,

vs.

FAIRLAWN MEATS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 427, AFL, hereinafter called the Union, Sam Pollock, President of the Union, and James Daugherty, a business representative of the Union, pray that a writ of certiorari issue to review a final judgment of the Supreme Court of Ohio entered in the above entitled case on November 9, 1955, refusing to vacate and set aside a permanent injunction against petitioners.

CITATIONS TO OPINIONS BELOW.

The opinion of the Court of Common Pleas (Tr. 100-110), is unreported and is printed in Appendix B, hereto, *infra*, pp. 27-35. The permanent injunction and decree entered by the Court of Common Pleas (Tr. 98-99), is printed in Ap-

pendix C, *infra*, pp. 36-37. The opinion of the Court of Appeals, Summit County (Tr. 82-92), is unreported and is printed in Appendix D, hereto, *infra*, pp. 38-46. The permanent injunction and decree entered by the Court of Appeals (Tr. 78-79), is printed in Appendix E, hereto, *infra*, pp. 47-48. The decision of the Supreme Court of Ohio (Tr. 4), dismissing petitioners' appeal "filed as of right herein," for the reason that "no debatable constitutional question is involved" (Tr. 5-6), is reported in 164 O. S. 285, 130 N. E. 2d 237, and is printed in Appendix F, hereto, *infra*, p. 49.

JURISDICTION.

The judgment of the Supreme Court of Ohio was entered on November 9, 1955 (Tr. 4, 5-6), p. 49, *infra*. Rehearing was denied on December 7, 1955 (Tr. 5, 6). The federal questions here urged were properly and timely presented by petitioners in their amended answer in the Court of Common Pleas (Tr. 500); in their motion to dismiss (Tr. 118-119, 123, 125, 358, 359, 493); in their appeal to the Court of Appeals, Summit County (Tr. 97); in their motion for new trial (Tr. 80-81); in their appeal as of right to the Supreme Court of Ohio (Tr. 74-76, 13-29) and in their petition for rehearing (Tr. 7). The federal questions were discussed and decided adversely to petitioners by the Court of Common Pleas and by the Court of Appeals. The Supreme Court of Ohio, without discussion, sustained the decisions below on the ground that the federal questions urged by petitioners were not "debatable" (Tr. 5-6).[1]

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1. The court thereby rejected on the merits petitioners' contentions based upon the Constitution and laws of the United States. *Tumey* v. *Ohio*, 273 U. S. 510, 515; *Matthews* v. *Huwe*, 269 U. S. 262.

QUESTIONS PRESENTED.

1. The employer involved operates three stores in the State of Ohio, at which it sells meat and meat products to retail and wholesale customers. In the course of this business, the employer annually imports directly from other states merchandise valued at over $100,000, amounting to approximately fifteen per cent of its gross purchases. The employer also causes to be imported from other states merchandise valued at approximately $200,000 annually. The first question presented is whether the employer's business operations "affect commerce" within the meaning of the National Labor Relations Act.

2. For budgetary or other policy reasons, the National Labor Relations Board refuses to assert its own jurisdiction unless the interstate operations of the employer involved in a labor dispute are substantially greater than that set forth in question numbered 1. The second question is whether the National Board's declination of jurisdiction vests in the states jurisdiction to apply to peaceful picketing arising out of a labor dispute state law or policy which duplicates, parallels or conflicts with the policies of the National Act.

3. Whether a state may, consistently with Sections 7 and 13 of the National Labor Relations Act and the Fourteenth Amendment, enjoin peaceful picketing in front of the entrance to an establishment involved in a labor dispute, on the ground that the employer owns the property on which the pickets are walking and objects to its use for picketing, where the employer owns all of the property between the store entrance and the highway and maintains the entire area for use by its customers.

STATUTES INVOLVED.

The statutory provision principally involved is Section 10(a) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151 *et seq.*). That section reads as follows:[2]

> The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except w' re predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

Also involved are Sections 7, 8(a)(1), 8(b)(2), 8(b)(4)(A) and 13 of the Act and Article I, Section 9, paragraph 3, Article VI, paragraph 2, and the Fourteenth Amendment to the Constitution of the United States. The other relevant provisions of the Act are reprinted in Appendix A, hereto, pp. 25-26, *infra*.

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2. Prior to the 1947 amendments, Section 10(a) read as follows: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

STATEMENT.

A. The Labor Dispute.

Fairlawn Meats, Inc., hereinafter referred to as Fairlawn, operates three stores in the vicinity of Akron, Ohio, at which it sells meat and related products to both wholesale and retail customers (p. 38, *infra*, Tr. 82; 510, 212).[3] At these stores it employs approximately 50 persons (p. 38, *infra*, Tr. 82; 214).

On May 10, 1952, Fairlawn entered into a preliminary agreement in which it agreed to recognize the Union as exclusive bargaining agent for its employees and agreed to meet with the Union to negotiate a contract covering wages, hours, and other working conditions (p. 29, *infra*, Tr. 103-104; 494, 140-141). The contract proposed to Fairlawn by the Union pursuant to this agreement included a union shop provision (pp. 30, 38-39, *infra*, Tr. 83, 104; 136, 142-143).

Prolonged negotiations thereafter failed to produce agreement on substantive terms (p. 39, *infra*, Tr. 103, 83; 144, 300). On February 1, 1954, Ekers, owners of Fairlawn (Tr. 212), invited fifteen of the employees of the Tallmadge store to a meeting at a local tavern after working hours (Tr. 285-286, 291, 309-310, 427-430). There he told them that he did not want them to join the Union; that signing a contract with the Union would result in cutting down to a forty (40) hour week, and loss of overtime; and that the store would close on Sunday (Tr. 429, 146).

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3. The stores are located at 278 West Avenue, Tallmadge, Ohio, 2246 W. Market Street, Akron, Ohio, and the junction of U. S. Route 21 and State Route 176, West Richfield, Ohio (Tr. 212). As reference to individual stores is made hereafter, they are described as the Tallmadge, Market Street and West Richfield stores.

On February 2, 1954, the Union voted to authorize a strike at Fairlawn if negotiations were not successfully concluded (Tr. 154, 157-158, 201-202). The next day, Ekers told the officers of the Union that he did not care to negotiate further (pp. 29, 39, *infra*, Tr. 103, 83; 158, 372-373, 300, 202-203). On February 4, 1954, the Union established a picket line in front of the entrance of each of the three stores (Tr. 374). The pickets carried placards reading: "On strike" (p. 34, *infra*, Tr. 108).

At the time the picketing began, eighteen of Fairlawn's employees were either members of the Union or had authorized the Union to represent them (p. 38, *infra*, Tr. 83; 376). Five of the employees of the West Richfield store went on strike and participated in the picketing. (*Ibid.*) These five were later joined by two part time employees. (*Ibid.*) Two other employees, who did not picket, remained away from work until February 11, 1954 (p. 38, *infra*, Tr. 83; 377-378).

On or about February 10, 1955 (Tr. 338), Thursby, manager of the Tallmadge store (Tr. 321, 325), prepared a petition (Tr. 335-336, 337, 344) declaring that the "employees of Fairlawn Meats, Inc., hereby certify that there is no dispute or disagreement between us and our employer * * * and we are not on strike against our employer, and we are not in favor of our employer signing any agreement that will force or compel us to join any union" (p. 30, *infra*, Tr. 104; 336, P. Exh. 42). Thursby himself circulated the petition among the employees at Tallmadge and asked them to sign (Tr. 335-336, 337-338, 431, 458-459, 466). At Market Street, Brigham, the manager, called the employees together and asked them to sign (Tr. 323, 348). At Richfield, Moyer, the manager, asked the employees to sign (Tr. 322, 353-354). In all, 41 of the employees signed the petition (p. 30, *infra*, Tr. 104). After

February 19, 1954, seven employees of the Tallmadge store joined the strike (Tr. 406-407, 415-417). On March 6, 1954, Thursby called employees Vargo, Herbruck and Tandarich into his office and inquired whether, since they had joined the Union, they would like to resign their jobs. Thursby dictated resignation forms, and the employees signed them (Tr. 336-337, 341-344, 470-472; cf. 189, 279-284, 313-318).

B. Proceedings Below.

On February 8, 1954, Fairlawn filed in the Court of Common Pleas, Summit County, Ohio, a petition for permanent injunction and an application for temporary restraining order prohibiting all picketing by defendants (Tr. 510-515).[4] In its petition Fairlawn alleged that its employees have been "free from influence by the plaintiff as to whether they should deal with plaintiff individually or collectively;" that the employees had freely chosen to represent themselves individually rather than to be represented by the defendant Union; that "no bona fide labor dispute" exists between plaintiff and its employees; that the Union was engaged in a conspiracy "to compel and coerce plaintiff to in turn coerce and compel his employees * * * to become members of * * * defendant union"; and that pursuant to that conspiracy defendant had "caused a number of individuals to picket the meat markets." (*Ibid.*) The defendants removed the case to the United States District Court for the Northern District of Ohio, Eastern Division, and in that court filed a motion to dismiss, alleging *inter alia*, that the state court was without jurisdiction to enter-

4. Upon preliminary hearing, the trial court granted a temporary injunction restraining picketing at the Tallmadge and Market Street stores, but denied relief against picketing at the West Richfield store on the theory that at the latter store employees had left work to go on strike while at the former stores they had not (Tr. 506-507).

tain the petition or to grant any of the relief requested because the subject matter of the action had been preempted by Congress in the National Labor Relations Act (Tr. 504-505). The district court, finding prerequisites of removal jurisdiction wanting, remanded to the state court (Tr. 503).

Following the remand, defendant Union filed in the Court of Common Pleas an amended answer, alleging, *inter alia*, that Fairlawn's business operations affected interstate commerce within the meaning of the National Labor Relations Act; that the controversy arose out of a labor dispute within the meaning of that Act (Tr. 498-499); that the National Board had exclusive jurisdiction to hear and determine the matters complained of, and that the state court was deprived by the National Act of jurisdiction to entertain the action (Tr. 500). In its reply to the amended answer, plaintiff denied that the National Board's jurisdiction was exclusive and asserted that the state court had full jurisdiction (Tr. 495). The reply further alleged that defendants had engaged in a "secondary boycott" by inducing plaintiff's chief supplier of meat, pursuant to threats, to refuse to sell meat to plaintiff (*Ibid*).

1. The Interstate Commerce Facts.

The uncontroverted evidence shows that Fairlawn annually purchases for resale to its retail and wholesale customers merchandise valued at between $750,000 and $1,000,000 (p. 29, *infra*, Tr. 102; 217). Its purchases of meat and other supplies from June, 1952 to June, 1953, exceeded $873,000 (Tr. 249-258). Of this amount, merchandise valued at over $103,000, was shipped directly to Fairlawn from outside the State of Ohio (Tr. 216, 262-263).[5]

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5. In a single month prior to the strike, Fairlawn purchased merchandise valued in excess of $73,000, of which almost $12,000 represented direct out-of-state shipments (Tr. 264).

Ekers admitted that approximately fifteen percent of Fairlawn's total purchases are shipped to it directly from outside Ohio (Tr. 216, 217). Fairlawn's principal suppliers of dressed beef are the Gibbs and Peerless Packing companies in Cleveland, Ohio (Tr. 216, 223). During 1953, Peerless sold to Fairlawn dressed beef valued at over $221,000 (Tr. 477). More than half of the cattle from which Peerless processed this dressed beef was shipped to Peerless from other states (Tr. 477-479). During 1953, Fairlawn purchased over $146,000 of merchandise from Gibbs (Tr. 331). Gibbs, likewise, imports from other states the major portion of the cattle which it slaughters and dresses for sale to customers like Fairlawn (Tr. 327-328, 330).

2. The Union Majority Issue.

In addition to the evidence tending to show employer interference, pp. 6-7, *supra*, cf. p. 39, *infra*, Tr. 83, the Union, without waiving its jurisdictional objection (p. 40, *infra*, Tr. 84), adduced evidence tending to show that by the time of the trial approximately twenty-six of Fairlawn's employees had either joined the Union or authorized it to represent them (Tr. 402-407, 415, 417, cf. Tr. 399-400, D. Exh. 25).

3. The Trespass Issue.

Fairlawn owns approximately 200 feet of property on the east side of State Route 21 in Richfield Township on which the West Richfield store is located (Tr. 212, 224-225). The store is set back approximately 50 feet from the curb line of the highway (Tr. 181). The area between the store and the highway is vacant; a semicircular driveway, with both exits on Route 21, is utilized by automobiles to gain access to the store and to a group of other business houses adjacent to and south of the store (Tr. 178, 181-183, 185-186). The vacant area is used for parking (Tr. 178, 182).

There is no sidewalk either paralleling the highway or in front of the entrance to the store (Tr. 308-310, 383). Fairlawn's property rights extend "out to the road" (Tr. 179).

Fairlawn leases approximately 285 feet of property along West Avenue, on which the Tallmadge store is located (Tr. 214, 225-226). That store, like the Richfield store, is "in the country" (Tr. 163, 224). The location of the store with reference to the highway, the customer driveways leading to and from the store to the highway, the parking area in front of the store and the absence of sidewalks are similar to the situation at Richfield (Tr. 163-164, 231, 308, 381). The lessee's property rights at Tallmadge extend to the center of the road (Tr. 231). Those few pedestrians who have occasion to traverse the property walk "just off the pavement" of the street on Fairlawn's leased property (Tr. 232).

Fairlawn's Market Street store is located in one portion of a building which houses the Sparkle Supermarket (Tr. 213, 229). Fairlawn owns no interest in the building itself or in the adjacent property (Tr. 213). At this store also, only a parking area separates the store building from the street (Tr. 230). There is very little pedestrian traffic (Tr. 230).

At all three locations, the pickets walked in front of the store, paralleling the street or highway, at a distance variously estimated at from three to twenty feet from the curb line (Tr. 175, 178, 185-186, 208, 225, 226, 380, 384, 385, 483).[6] Pollock testified that it was his "belief and understanding" that the pickets were walking "on a strip of ground that the public had access to" (Tr. 413). Fair-

6. The pickets frequently walked in the paved area—the driveways (Tr. 164-165). The evidence shows, however, that at no time did the pickets obstruct ingress or egress to the stores (Tr. 168), and there is no contrary finding (*Cf.* pp. 35-36, *infra*).

lawn objected to the use by the pickets, employees and non-employees alike (Tr. 381, 402, 405, 406, 413), of its property at Richfield and Tallmadge for the purpose of picketing (pp. 43, 46, *infra*, Tr. 91; 225, 227, 240).

4. The Secondary Boycott Issue.

Ekers testified that after the picketing began he was followed by Union representatives to the Gibbs and Peerless plants when he went to purchase meat there, and that representatives of these companies refused to sell meat to him (Tr. 220, 221-222, 275, 301-302, 306-307). Evidence was also adduced that representatives of another local union affiliated with the Amalgamated Meat Cutters and Butcher Workmen of North America, the bargaining agent for Gibbs and Peerless employees, induced the Gibbs and Peerless managements to stop selling meat to Fairlawn because of its involvment in the labor dispute with petitioner (Tr. 171-172, 269, 271, 273, 302).[7]

C. Opinions of the Courts Below.

The Court of Common Pleas held that because, as the evidence showed and petitioners conceded, the volume of Fairlawn's interstate imports was insufficient to satisfy the jurisdictional policy standards promulgated by the National Labor Relations Board on July 15, 1954, as the criteria for assertion of its own jurisdiction over retail stores,[8] "if the Board originally had jurisdiction, it has

7. The Court of Appeals recited in its opinion that "in one • • • instance, when [Ekers] was at the place where he bought meat for resale, the air was let out of his tires" (p. 39, *infra*, Tr. 84). There is not a scintilla of evidence in this record, however, which connects the defendant union or any of its agents with this incident, and the court seems to have placed no reliance upon it (Tr. 272).

8. As correctly stated in the opinion (pp. 28-29, *infra*), the Board's current standards for assertion of jurisdiction over retail stores requires annual direct out of state imports of $1,000,000, or

ceded that to the state court" (pp. 28-29, *infra*, Tr. 103). On the merits, the court found the picketing was entirely peaceful (pp. 34-35, *infra*, Tr. 109), but that the object of the picketing was illegal because its purpose was to compel Fairlawn to enter into a union shop agreement at a time when the Union did not represent a majority of Fairlawn's employees (pp. 30, 33-34, *infra*, Tr. 104, 108-109). The court concluded that since its object was unlawful, the picketing did not arise out of a "labor dispute", and that "the banners, which recited: 'On strike,' did not state the truth." (p. 34, *infra*, Tr. 108.) The court also stated that there was "evidence of probative value to sustain a charge of secondary boycott" (p. 35, *infra*, Tr. 108-109). This evidence, said the court tended to support the allegation of unlawful objective (*Ibid*). The court entered a permanent injunction prohibiting the defendants from: (1) picketing the stores and places of business of the plaintiff; (2) trespassing on plaintiff's property, and (3) attempting to persuade any of plaintiff's suppliers to refuse to sell and deliver merchandise to the plaintiff (pp. 36-37, *infra*, Tr. 98-99).

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indirect imports of $2,000,000. Press release No. 445, "NLRB Announces Changes in Standards for its Exercise of Jurisdiction," July 1, 1954; Press release No. 449, *ibid*, July 15, 1954; *Hogue & Knoft Supermarkets*, 110 NLRB 543. Since Fairlawn's annual gross purchases did not exceed $900,000, it is clear, and petitioners throughout conceded, that the Board would not, under these standards have asserted jurisdiction over a charge alleging that by its picketing at Fairlawn's premises the Union was engaging in an unfair labor practice. As for the alleged "secondary boycott" involving the Union's activities with respect to the Gibbs and Peerless packing companies, however, it is by no means clear that the Board would not have entertained a charge by Fairlawn. *Cf. Local Union 25 v. New York, New Haven & H. R. Co.*, No. 33 this Term, 76 S. Ct. 227; *NLRB* v. *Associated Musicians*, 226 F. 2d 900, 907 (C. A. 2).

9. In finding that the Union did not represent a majority, the court disregarded the evidence tending to show interference by Fairlawn, *supra*, p. 6-7 and relied upon the fact that forty-one of the employees had signed the petition which had been drafted and presented to the employees for signature by Fairlawn's supervisory personnel (p. 30, *infra*, Tr. 104).

On appeal, the Court of Appeals considered *de novo* questions of both law and fact (pp. 38, 40, *infra*, Tr. 82, 84). It acknowledged petitioners' challenge to the jurisdiction of state courts to enjoin the exercise of "its right to picket the places of business of Fairlawn Meats" (p. 40, *infra*, Tr. 84). The court held, however, that Fairlawn's business did not "affect interstate commerce" within the meaning of the National Act because its business "is purely of a local character"; the volume of its business "is not large"; it "does not sell any of its products outside of the state of Ohio"; and its "purchases from out of this state, both direct and indirect, do not constitute a large portion of the products it offers for sale to the meat consuming public in Akron and Summit County" (p. 41, *infra*, Tr. 86). The court concluded that "there is no burden placed upon, or obstruction of, interstate commerce by any action taken by the parties to this case" (*Ibid.*) In view of this conclusion, the court stated that it found it unnecessary to discuss the Board's "jurisdictional yardsticks * * * to determine whether the National Labor Relations Board will assume jurisdiction" (pp. 40-41, Tr. 85-86).

On the merits, the court held that the object of the picketing was "forcing the great majority of employees to join the Union" (p. 43, *infra*, Tr. 88). Pursuit of this object by picketing, the court held, is prohibited alike by the National Act and the law of Ohio (pp. 44-46, Tr. 88-91). The court found that the picketing "was part of a plan to avoid an election by the Board" (p. 45, *infra*, Tr. 89-90). The court said (p. 46, *infra*, Tr. 91):

> Where, then, as in this case, no election has been held under the federal regulations, and it is shown that many more than a bare majority have indicated a desire not to organize and join the Union, it would be an 'unfair labor practice' to compel Fairlawn Meats to compel its employees to join a union contrary to their already expressed wishes.

The court concluded that (p. 46, *infra*, Tr. 91-92):

> * * * since the picketing herein was for organizational purposes only, and not to secure a settlement of grievances among the employees, and since the picketing in part was done on land owned by or under lease to Fairlawn Meats, and since the Union by threats and coercion instituted a secondary boycott against Fairlawn Meats, the picketing, although not accompanied by violence, was nevertheless unlawful under the announced policy in Ohio.

The court entered a permanent injunction against defendants in the same terms as the injunction which had been entered by the trial court (pp. 46, 47-48, *infra*, Tr. 92, 78-79).

While refusing to set aside the injunction, the Supreme Court of Ohio did not disclose the reasons which led it to conclude that the constitutional questions raised by petitioners were not "debatable". We must assume, therefore, that it may have adopted the reasoning of either or both courts below.

SPECIFICATION OF ERRORS TO BE URGED.

The court below erred:

1. In holding that Fairlawn's business does not affect interstate commerce within the meaning of the National Labor Relations Act.

2. In holding that the National Board, by promulgating jurisdictional policy standards, ceded to state courts its jurisdiction over alleged unfair labor practices involving enterprises which do not satisfy those standards.

3. In failing to hold that Section 10(a) of the National Act precludes assertion of jurisdiction by the states to apply to conduct which is subject to regulation under the National Act policies which parallel or conflict with those of the National Act.

4. In applying to the union conduct in issue state policies which conflict with the substantive policies of the National Act.[10]

5. In holding that a state may enjoin peaceful picketing in front of the entrance to a retail store involved in a labor dispute on the ground that the employer involved owns the property on which the picketing must proceed and does not consent to its use for that purpose.

6. In failing to hold that under the circumstances of this case the right of the Union to picket in front of the stores, despite the property owner's disapproval, is guaranteed by the National Labor Relations Act and the Fourteenth Amendment.

7. In failing to set aside and to vacate the permanent injunction.

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10. If certiorari is granted we shall demonstrate that while the courts below invoked principles of law identical in part with those of the National Act, the interpretation and application given to those principles was inconsistent with their interpretation and application by the National Board and the federal courts.

REASONS FOR GRANTING THE WRIT.

The critical question on which this case turns is whether, in the absence of a cession agreement entered into between the National Board and a state agency pursuant to Section 10(a) of the National Act, a state may apply to an enterprise which is subject to the National Act, but over which the Board would decline for policy reasons to assert jurisdiction, a state policy which parallels, duplicates or conflicts with the substantive policies of the National Act. Stated otherwise, the question is whether the Board's declination to assert its jurisdiction cedes the Board's jurisdiction to the states.[11]

1. Unlike the trial court, the court of appeals below avoided passing on this question by applying to a threshold inquiry—does the enterprise involved affect interstate commerce within the meaning of the National Act so as to bring it within the Board's jurisdiction—criteria diametrically opposite to those established by this Court.

This Court holds that the National Act covers "local" enterprises which regularly import from other states a quantity of merchandise or supplies greater than that to which courts apply the "maxim *de minimis non curat lex.*" *National Labor Relations Board* v. *Denver Bldg. & Construction Trades Council*, 341 U. S. 675, 683-685; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 606, 607; *Amalgamated Association* v. *Wisconsin Board*, 340 U. S. 383, 391. Under this rule, "local" businesses which import merchandise from other states of far less value than the more than $100,000 worth of goods which Fairlawn

11. Ohio decisions make it clear that but for its holding that the employer in this case was not subject to the National Act, either as a constitutional matter or because of the Board's declination to assert jurisdiction, the court below would have set aside the injunction on constitutional grounds. *Grimes & Hauer, Inc.* v. *Pollock*, 163 O. S. 372, 127 N. E. 2d 203, cert. denied, 350 U. S. 900.

annually imports directly, and the approximately $200,000 worth of goods which it imports indirectly, pp. 8-9, *supra*, are subject to the Act.[12]

The suggestion of the court of appeals (p. 41, *infra*, Tr. 85-86) that the Board's "jurisdictional yardstick * * * may be helpful" in determining whether a particular enterprise is subject to the National Act misconceives the nature and purpose of the yardsticks. The yardsticks apply only to enterprises which are, as a matter of law, subject to the Board's jurisdiction, but over whom for "budgetary or other reasons best known to the NLRB", the Board declines to assert its jurisdiction. *Retail Clerks Local No. 1564* v. *Your Food Stores*, 225 F. 2d 659, 662 (C. A. 10); *National Labor Relations Board* v. *Denver Bldg. & Con-*

12. See, *e.g.*, *National Labor Relations Board* v. *Denver Bldg. & Construction Trades Council*, 341 U. S. 675, 684 (annual purchases by local electric work contractor of over $55,000 from out of state held "not negligible"); *National Labor Relations Board* v. *Stoller*, 207 F. 2d 305, 306-307, cert. den., 347 U. S. 919 (C. A. 9) (annual out of state purchases of approximately $12,000 held to bring local laundry and dry cleaning establishment within reach of the Act); *National Labor Relations Board* v. *Daboll*, 216 F. 2d 143, 144 (C. A. 9), cert. den., 348 U. S. 917 (imports of approximately $77,000 annually held sufficient to subject local plastering contractor to Board's jurisdiction); *National Labor Relations Board* v. *Seven Up Bottling Co.*, 196 F. 2d 424, 426 (C. A. 5), aff'd *sub silentio*, 344 U. S. 344 (imports valued at more than $82,000 held adequate to subject local soft drink bottler to federal jurisdiction); *National Labor Relations Board* v. *El Dorado Water Co.*, 195 F. 2d 950, 953-955 (import of supplies valued at $65,000 for use in maintaining facilities held to subject local water company to National Act).

The fact, upon which the court of appeals relied, p. 13, *supra*, that Fairlawn's direct out of state imports amount to only 15 percent of its total purchases, is irrelevant under the applicable standards. The Act "cannot be applied by a mere reference to percentages", *Santa Cruz Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 467; see also, *National Labor Relations Board* v. *Cowell Portland Cement Co.*, 108 F. 2d 198, 201 (C. A. 9) (interstate business only 10 percent of gross business); *J. L. Brandeis & Sons* v. *National Labor Relations Board*, 142 F. 2d 977, 979-980 (C. A. 8), cert. den., 323 U. S. 751 (interstate sales only .0024 percent of total).

struction Trades Council, 341 U. S. 675, 684; *Federal Dairy Co.*, 91 NLRB 638, 639. The Board's "self-imposed rule is not jurisdictional." *National Labor Relations Board* v. *Daboll*, 216 F. 2d 143, 144 (C. A. 9); *Wisconsin Board* v. *Teamsters Union*, 267 Wis. 356, 365; 66 N. W. 2d 318, 323.

If, as the Court of Appeals for the Tenth Circuit held in *Retail Clerks Local No. 1564* v. *Your Food Stores*, 225 F. 2d 659, 663, Congress precluded the states from asserting jurisdiction over any enterprise subject to the National Act in the absence of a cession agreement made pursuant to Section 10(a), it is manifestly essential to the effectuation of that limitation, and to all enterprises affected by it, that the states not be permitted to evade it by determining initially, through the application of erroneous and improper standards, that particular enterprises are not subject to the National Act.

2. The holding of the court of common pleas below that the effect of the Board's adoption of jurisdictional policy standards is to cede to state courts the Board's jurisdiction to remedy unfair labor practices is in square conflict with the decision of the Tenth Circuit in the *Your Food Stores* case.[13] The Court of Appeals of Kentucky has followed the Tenth Circuit's holding[14] and concurrence with the Tenth

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13. In that case, as in this one, although the employer had at no time filed charges with the Board against the union conduct which he asked the state court to enjoin, it was apparent and conceded that under the jurisdictional policy standards then in effect the Board would not assert its jurisdiction and that it would therefore have been "futile" for the employer to do so. See *Bldg. Trades Council* v. *Kinard Construction Co.*, 346 U. S. 933.

14. *Food Basket, Inc.* v. *Amalgamated Meat Cutters and Butcher Workmen of North America*, decided October 21, 1955, not officially reported, but reported unofficially in 29 C. C. H. Labor Cases ¶ 69, 561, pp. 90, 158, 90, 159 n. 1. Accord: *Universal Car Co.* v. *Ass'n. of Machinists* (Cir. Ct. Kent County, Mich.) reported

Circuit's view has been expressed by the Supreme Court of Missouri.[15]

On the other hand, the highest courts of California and Texas have held, in accord with the decision below, that wherever it is clear that the Board would refuse to assert its own jurisdiction, the states are free to apply the policies of the National Act to the dispute.[16]

The Tenth Circuit's holding appears to accord with the views expressed by this Court as to the purpose and effect of Congress' addition of the proviso to Section 10(a) (p. 4, *supra*).[17] In *Algoma Plywood Co.* v. *Wisconsin Board*, 336 U. S. 301, 313, the Court stated that the purpose of this proviso was:

> to meet situations made possible by *Bethlehem Steel Co.* v. *New York S. L. R. B.*, 330 U. S. 767, where no State agency would be free to take jurisdiction of cases over which the National Board had declined jurisdiction. See H. R. Rep. No. 245, 80th Cong., 1st Sess. 40; S. Rep. No. 105, Minority Views, Part 2, 80th Cong. 1st Sess. 38.

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unofficially at 35 LRRM 2087; *New York State Board* v. *Wags Transportation System*, 139 N. Y. S. 2d 731, aff'd on other grounds, 84 App. Div. 883, 134 N. Y. S. 2d 603.

15. *Graybar Electric Company, Inc.* v. *Automotive, Petroleum & Allied Industries Employees Union*, No. 44, 192, September Session, 1955, decided February 13, 1956 (en banc), 37 LRRM 2556.

16. *Garmon* v. *Bldg. Trades Council*, .. Cal. 2d .., 291 P. 2d 1; *Cain, Brogden & Cain* v. *Teamsters Local 47*, ... Tex. ....., 285 S. W. 2d 942. Accord: *School District* v. *Trades Council* (Cir. Ct. Ottowa County, Mich.), reported unofficially 37 LRRM 2232; *Cf. Building Trades* v. *Bonito*, .. Nev. .., 280 P. 2d 295; see *Busch & Sons* v. *Retail Union*, 15 N. J. 226, 233-234, 237, 104 A. 2d 448.

17. Elimination of the word "exclusive" from the proviso as amended, was, of course, neither designed nor intended to affect any extension of state power in the field over which Congress gave jurisdiction to the Board. See Brief for the National Labor Relations Board as *Amicus Curiae* in *Montgomery Bldg. & Construction Trades Council* v. *Ledbetter Erection Co., Inc.*, No. 43, October term, 1952, pp. 30-37; *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d. 183 (C. A. 4).

In *Amalgamated Association* v. *Wisconsin Board*, 340 U. S. 383, 397, n. 23, this Court said:

> A proviso of § 10 (a) authorizes cession of jurisdiction to the states only where the state law is consistent with the federal legislation. This insures that the national labor policy will not be thwarted even in the predominantly local enterprises to which the proviso applies. S. Rep. No. 105, 80th Cong., 1st Sess. 26 (1947). See also minority views to same report, *id.*, pt. 2, 38, agreeing as to this feature of the legislation.

Under the Wagner Act the National Board took the position that, as a practical matter, states should be permitted to apply their own laws and policies to labor disputes over which, for policy reasons, the Board declined to assert its jurisdiction. Brief for the United States as *Amicus Curiae* in *Bethlehem Steel Company* v. *New York State Labor Relations Board*, Nos. 55, 76, October Term, 1946, pp. 66-70. After the addition of the proviso to Section 10(a), however, the Board has consistently recognized that states may acquire jurisdiction in these areas only pursuant to a cession agreement between the National Board and a state agency.[18] Because, in the Board's view, no state has brought

18. *Punch Press Repair Corp.*, 89 NLRB 614, 615 (1950): (the Board: "lacks power under the present statute to divest itself of jurisdiction, except in conformity with Section 10 (a) of the amended Act"); *Breeding Transfer Co.*, 110 NLRB 493, 497 ("a desire to establish broader State jurisdiction is in no wise a factor in our decision" to raise the dollar volume requirements of the Board's jurisdictional policy standards); Memorandum for the National Labor Relations Board as *Amicus Curiae* in *Gilson Bros.* v. *Wisconsin Employment Relations Board*, No. 383, October Term, 1949, pp. 8-9: ("In authorizing the Board under certain circumstances to cede its jurisdiction to state agencies Congress made manifest its intention that, absent cession, the states were not to exercise jurisdiction as to matters covered by the National Act involving employers and employees who are subject to the National Act."). See also Brief for the National Labor Relations Board as *Amicus Curiae* in *United Automobile Workers* v. *Wisconsin Employment Relations Board*, Nos. 14 and 15, October Term, 1948, pp. 44-45; Brief for the National Labor Relations Board as *Amicus Curiae* in *Montgomery Building & Construction Trades Council* v. *Ledbetter Erection Co.*, No. 43, October Term, 1952, pp. 35-36.

its laws and policies into full conformity with the federal scheme, the Board has deemed itself precluded from making any such cession agreements.[19]

In 1948, the Joint Committee on Labor Management Relations which had been appointed pursuant to Title IV of the 1947 Act, commented on the desirability of permitting states which had not enacted statutes "modeled after the [National] Act", to regulate labor disputes in local enterprises over which the Board declines to assert jurisdiction. S. Rep. No. 986, 80th Cong., Second Sess., Part I, pp. 30-31. The Committee concluded that amendment of the Act would be necessary to enable the states to act in this area, and that, if such an amendment "would permit inconsistent regulations and as many different policies as there are states having labor relations acts, the desirability appears questionable." Subsequently, bills were introduced in Congress to permit the states, without regard to Section 10(a), to exercise jurisdiction where the National Board declines to act.[20] None has been enacted.

Nevertheless, this Court has twice in recent years expressly reserved the question whether, and under what circumstances, declination of jurisdiction by the Board for policy reasons leaves the states free to act. *Garner* v. *Teamsters Union*, 346 U. S. 485, 488; *Building Trades Council* v. *Kinard Construction Co.*, 346 U. S. 933. The volume of litigation and divergence of views which have developed on this issue, and its importance to thousands of employers and employees and to the many labor organi-

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19. *Thirteenth Annual Report*, National Labor Relations Board (Govt. Print. Off., 1949), p. 18.

20. S. 1264, 83rd Cong., 1st Sess., 99 Cong. Rec. 1845-1848 (1953); S. 2218, 83rd Cong. 1st Sess., 99 Cong. Rec. 7283-7284 (1953); S. 2650, 83rd Cong. 2d Sess.; 100 Cong. Rec. 91, 100 Cong. Rec. 5194, 5824, S. Rep. No. 1211, 83rd Cong. 2nd Sess. (1954).

zations affected by the Board's shifting policy standards,[21] merits its early resolution by this Court in the public interest.

3. The findings that the Union was guilty of trespass by picketing on property owned by or under lease to Fairlawn at the West Richfield and Tallmadge stores (pp. 9-11, 12, 14, *supra*), may have been regarded by the courts below as a ground independent of the objective for enjoining picketing at those two locations. That ground, however, could not sustain the injunction against picketing at the Market Street store, since Fairlawn specifically disclaimed any contention that the pickets at that store were guilty of trespass (Tr. 213, 230, *cf.* pp. 43, 46).

Viewed as an independent ground for assertion of jurisdiction by a state court to enjoin picketing under the circumstances prevailing at the West Richfield and Tallmadge stores, that provision of the decree based upon the trespass finding poses an issue of major significance in the effectuation of rights guaranteed to employees and labor organizations against state infringement by Sections 7 and 13 of the National Act, and by the freedom of speech guarantee of the Fourteenth Amendment.[22]

The geographic pattern of the retail stores involved here is characteristic of the great majority of urban and

21. See, Daykin, *NLRB Jurisdictional Standards II*, 6 Labor Law Journal 696, 708-709 (October, 1955); Turnbull, *Federal-State Jurisdictional Problems*, 7 Labor Law Journal 5 (January, 1956); Whitney, *NLRB Jurisdictional Policies and the Federal-State Relationship*, 6 Labor Law Journal 3, 76-80 (January, 1955); Feldblum, *Jurisdictional "Tidelands" in Labor Relations*, 3 Labor Law Journal 114, 115.

22. *Thomas* v. *Collins*, 323 U. S. 516, 533-534; *Hill* v. *Florida*, 325 U. S. 538; *International Union* v. *O'Brien*, 339 U. S. 454; *Amalgamated Association* v. *Wisconsin Board*, 340 U. S. 383; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; *Schneider* v. *State*, 308 U. S. 147, 162-165; *cf. Marsh* v. *Alabama*, 326 U. S. 501; *Hague* v. *CIO*, 307 U. S. 496.

suburban shopping centers which have been developed recently. The stores in these centers, typically, are set back from the road or highway, are reached by driveways leading directly from the road to the stores, and rarely have public sidewalks parallel to the roadway.[23] To picket a store so located, in the course of a labor dispute, the pickets, thus, must traverse "private" property, land often owned by or under lease to the employer involved in the dispute.

To hold, as did the courts below, that the employer's ownership of such property, which is maintained for and freely used by his customers, entitles him to preclude peaceful picketing at the store entrance would thus foreclose all peaceful picketing in a large segment of the retail industry of the nation. Cf. *Retail Clerks Local 1564* v. *Your Food Stores*, 225 F. 2d 659, 662 and note 8; *ibid*, 124 F. Supp. 697, 701-702 (D. N. M.); *ibid*; 121 F. Supp. 33 (D. N. M.). The right to publicize a labor dispute by peaceful picketing at the entrance to the establishment involved is guaranteed against state infringement by Sections 7 and 13 of the National Act and by the Fourteenth Amendment.[24] Whether, under these circumstances, the naked property right of the employer supersedes the statutory and constitutional right of his employees peacefully

23. *Allied Plans Biggest Network of Suburban Shopping Centers*, Business Week, January 15, 1955, p. 62; *Cutraters Move to Suburbs*, Business Week, January 22, 1955, p. 47; *Downtown Needs a Lesson From the Suburbs*, Business Week, October 22, 1955, pp. 64-65, 68; *Builder Owner of Largest Shopping Center*, Fortune, May, 1954, p. 44; *How to Expand Shopping Center Zones*, The American City, January, 1956, pp. 116-117.

24. *International Rice Milling Co. v. National Labor Relations Board*, 341 U. S. 665, 672-673; *National Labor Relations Board* v. *Denver Bldg. Trades Council*, 341 U. S. 675, 687; *Schneider* v. *State*, 308 U. S. 147, 162-165; *Wisconsin Board* v. *Teamsters' Union*, 267 Wisc. 356, 66 N. W. 2d 318; cf., *Marshall Field & Co.* v. *National Labor Relations Board*, 200 F. 2d 375, 382 (C. A. 7); *Columbia Southern Chemical Corp.*, 110 NLRB 206, 208.

to picket is a question of public importance which this Court should resolve.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the foregoing petition for certiorari should be granted.

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Counsel for Petitioners.

APPENDIX A.

The relevant provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. 151 *et seq.*, are as follows:

Sec. 2. When used in this Act— * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an

agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

1. To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Sec. 14. (a) * * * no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

APPENDIX B.

Opinion of the Court of Common Pleas.

(Caption Omitted.)

FINDING.

EMMONS, *J.*

In the first instance, it appearing to the court that there was a misnomer of the Union defendant wherein it was referred to as Local Union No. 427, Amalgamated Meat Cutters Union, Affiliated with the American Federation of Labor, and that the true style of the said Union is the Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 427, A. F. of L., the court is permitting the change of name to be made to conform to the proof by interlineation without reverification.

This cause came on to be heard upon the issues raised by the pleadings, and upon trial duly had the court is of the opinion that there are but two questions involved:

First: Does the Common Pleas Court have jurisdiction in this case?

Second: Did the evidence prove a situation existing such as made picketing and other acts of the defendants illegal to the extent that a permanent injunction should issue?

It goes without saying that if the first question is to be determined in the negative, then the second question need not be answered.

The defendants make much ado over the fact that the plaintiff company made purchases of meat, dressed

and processed, which originally came into the state by interstate commerce, and since such was the fact then the National Labor Relations Board acquired exclusive jurisdiction in this case.

Albert Satin, Inc., vs. Local 445 Electrical Workers, 22 L. W. 2606. In this case it was held that while it is apparent from a reading of the pertinent decisions and provisions of the Federal Act that Congress did give the Board exclusive jurisdiction over unfair labor practices affecting interstate commerce, it also gave the Board power to cede its jurisdiction to state courts.

Garner vs. Teamsters, 74 Sup. Ct. 161. Here the court determined that neither the NLRB nor the Labor Management Relations Act were involved except in cases in which the controversy "affects interstate commerce."

The cases following this particular line of reasoning continued to add to the phrase "affecting interstate commerce" and making it read: "substantially affecting and interfering with interstate commerce."

Later on the NLRB in the following cases expressed what was known as "the volume of business test." 91 NLRB 638; 88 NLRB 226; 87 NLRB 248.

Finally the Board has set down greater measures and newer standards for "the volume of business test," which standards became effective July 15, 1954, and are set out in 14014 C. C. H. [*sic*]

"For retail stores:

1. A single independent retail store or chain of stores operating entirely within one state will not come under the Board's jurisdiction unless the store involved in the case has:

(a) Purchases amounting to at least $1,000,000.00 a year coming to it directly from outside the state;

(b) Purchases of $2,000,000.00 a year coming to it indirectly from outside the state."

(The former standards for stores were $500,000.00 a year for direct purchases from outside the state and $1,000,000.00 a year from indirect purchases outside the state.)

Since less than 5 per cent of the plaintiff's business was wholesale, that business would well come within the definition of retail stores, and under either standard the business done by the plaintiff company was well under those measures of "volume of business."

Recently the NLRB in the case of *Union vs. Arthur and Ted Shapiro, dba the Packard Company,* dismissed that case in which the Packard Company was charged with unfair labor practices because it involved "small business" and did not come within the limits that the Board set for accepting jurisdiction, the purchases being well under the $1,000,000.00 class.

It is therefore the court's finding that insofar as the first question is concerned that this court does have jurisdiction in this case, since the plaintiff company too is well within the limits set by the Board in their "volume of business test," and that if the Board originally had jurisdiction, it has ceded that to the state court.

Coming to the second question to be here determined, the court finds that a stipulation was signed by B. H. Ekers for the plaintiff, and Dan J. DeSantis, business representative, for the defendant Union, in which the employer (the plaintiff company) agreed that when a contract was concluded it should include a provision establishing a union shop security clause, and also further provided that either party might at their option cancel the stipulation.

Ekers, on behalf of the plaintiff company, would not sign a contract with the defendant Union, and even went so far as to bring this injunctive proceedings against them, so he thereby, constructively at least if not actually, exer-

cised his option to cancel the aforesaid stipulation—so insofar as this case is concerned, this stipulation is of no effect, except to express the intention of the defendants to cause the plaintiff company to establish a union shop.

The contract which the plaintiff company was asked to sign, and which the president refused to do, contained, among other terms, the following:

> "All employees covered by this agreement shall within thirty days after the execution of this agreement, or thirty days after their employment, whichever is later, during the term of this agreement, become members of the Union and remain members of the Union in good standing during the life of this agreement. The employer agrees to notify the Union of any new help."

Evidence was presented which proved the fact to be that no employees were exempted from the coverage and the terms of the contract, so that if and when the contract was signed it would be a compelling force for all the employees of the plaintiff to become members of the said Union, whether they wanted to or not or they could no longer be employed by the plaintiff company. And of the 50 employees of this company 41 of them on February 10th, 1954, signed the following statement:

> "We, the undersigned, employees of the Fairlawn Meats, Inc., hereby certify that there is no dispute or disagreement between us and our employer, the Fairlawn Meats, Inc., as to hours of work, rate of pay, or any conditions affecting our employment, and we are not on a strike against our employer, and we are not in favor of our employer signing any agreement that will force or compel us to join any union."

There have been numerous cases decided, locally and nationally, which heretofore gave the unions the right to peacefully picket and banner an employer under the con-

stitutional right of freedom of speech, even though there was no labor dispute. Some of these cases are as follows: *A. F. of L. vs. Swing*, 312 U. S. 321; *Milk Wagon Drivers etc., vs. Meadowmoor Dairies, Inc.*, 312 U. S. 287; *Iacomini's Restaurant, Inc., vs. Hotel Employees and Bar Tenders Local 118 et al.*, 63 Ohio Law Abstract 258. However there has been a recent definite trend that shows a change of thought, as pointed out in *W. E. Anderson Sons Company vs. Local Union 311*, 156 O. S. 541:

> "Suddenly the view of the Supreme Court seemed to change to a recognition of rights in certain instances which warranted an injunction against picketing or bannering notwithstanding the constitutional protection of free speech."

After making the above statement Justice Hart, speaking for the Supreme Court of Ohio, then cited three cases decided by the Supreme Court of the United States: *Building Service Employees International Union Local 262 vs. Gazzam*, 339 U. S. 532; *Hughes vs. Superior Court*, 339 U. S. 460; *International Brotherhood of Teamsters Union Local 309 vs. Hanke*, 339 U. S. 470.

Quoting syllabus 4 in the *Anderson* case, *supra*, 156 O. S. 543:

> "Picketing or bannering as a means of exercising free speech will be afforded constitutional protection as long as it is lawfully conducted, but the right of free speech is predicated on the lawful use of that right, and if through conspiracy or unlawful conduct the result of its exercise by such means unlawfully injures another in his property rights, the guarantee ceases and the exercise of the claimed right by such means may be enjoined or prohibited."

It was stated by Justice Minton in *Union vs. Gazzam*, 339 U. S. 533, cited *supra*:

> "If respondent had complied with petitioner's demands

and had signed one of the tendered contracts and lived up to its terms, he would have thereby coerced his employees. The employees would have had no free choice as to whether they wished to organize or what union would be their representative."

108 O. S. page 95, in *The LaFrance Electrical Construction and Supply Company vs. The International Brotherhood of Electrical Workers Local 8, et al.*, Justice Florence Allen said:

"Equality of justice demands that in any controversy the rights of all parties are scrupulously maintained. The right of the workmen to be employed, irrespective of union membership, must be maintained; the right of the employer to conduct his business without illegal interference must be upheld and legal means employed by strikers must not be curtailed."

Crosby vs. Rath, 136 O. S. 352:

"The right to contract, the right to do business and the right to labor freely and without restraint are all constitutional rights, equally sacred, and the privilege of free speech cannot be used to the exclusion of other constitutional rights, nor as an excuse for unlawful activities in interference with another's business."

Coming now to a decision rendered by our own Ninth District Court of Appeals in 94 Ohio Appeals 361, *Bean vs. Local Union 698 et al.*, we find the syllabus in this case as follows:

"In the absence of a dispute between employer and employees, or between the union and the employer or employees, a labor union may not engage in organizational picketing, even though peaceful, for the purpose of bringing pressure to bear upon the employer to require his employees to join the union."

In his opinion in the *Bean* case Judge Stevens stated:

"The sole question for determination here is this:

May a union, in the absence of a dispute between employer and employees, or between the union and the employer or employees, engage in peaceful picketing for the purpose of bringing pressure to bear upon the employer to require his employees to join the union? In other words, may peaceful picketing for organizational purposes of the union be lawfully conducted? We think the question stated has been completely answered in the negative by the decision in Crosby vs. Rath."

Was there a labor dispute in the instant case?

Miller vs. District 76, 23 Labor Cases 67487:

"Picketing for the purpose of coercing an employer to sign a collective bargaining agreement and compelling his employees to rejoin the union does not present the existence of a labor dispute and will be enjoined."

Wischusen vs. Griffin, 23 Labor Cases, section 67683:

"Not every matter which directly or indirectly affects labor is a labor dispute. There is no labor dispute involved where a union pickets for the unlawful purpose of forcing an employer to sign a contract recognizing the union as exclusive bargaining representative of his employees, without their consent."

Hotel Restaurant [*sic*] *vs. Union*, 23 Labor Cases, section 67485:

"Picketing for the purpose of forcing an employer to recognize as his employees' bargaining representative a union which does not represent a majority of his employees is the use of economic pressure for an illegal purpose and not in support of a bona fide labor dispute."

227 [*sic*] *Ohio Jurisprudence*, page 45:

"Picketing is not beyond the control of the state if the manner in which picketing is conducted, or the purpose which it seeks to effectuate, gives grounds for its disallowance."

I am governed in this case by the previous holdings made by courts superior to this one, and I am duty bound to apply the evidence as I find it to the law in this case, as interpreted by those courts.

Therefore, from all the evidence presented the court is of the definite conclusion that the defendants, Pollock and Dougherty, acting for the defendant Union, attempted to get Ekers, President of Fairlawn Meats, Inc., to sign a contract compelling union membership in the defendant Union within 30 days or be discharged from the employment of the plaintiff company, which fact would have denied the employees their freedom of choice; that there was no labor dispute existing; that the banners, which recited: "On strike," did not state the truth, and that while picketing and bannering were peaceful yet since no labor dispute was involved the picketing and bannering became unlawful and caused a diminution of the plaintiff's business to some 30 per cent.

I believe that it now has been established clearly by the decisions of the courts and the NLRB that injunctions will lie when the picketing and bannering is peaceful but unlawful, as well as where it is not peaceful.

A conspiracy is a combination of two or more persons to accomplish by concert of action some unlawful purpose, so that even though the pickets and defendants believed they were acting lawfully in peaceful picketing and bannering the plaintiff company, yet if it develops that their actions are unlawful then, having acted in concert, they become members of a conspiracy. Since the court is of the opinion that there is no labor dispute existing, then peaceful picketing and bannering done by the members of the defendant Union under the guidance and direction of the defendants was a conspiracy to do an unlawful act.

In this instance the court wishes to state that insofar

as picketing and bannering were concerned it was evident that the members of the defendant Union acted as ladies and gentlemen in all respects. However, even though the court finds no fault in the manner of picketing, yet the purpose for which it was done makes it unlawful so as to entitle the plaintiff to injunctive relief.

Was there a secondary boycott?

A secondary boycott is a combination not merely to refrain from dealing with a person, or to advise or by peaceful means persuade his customers from dealing with him, but to exercise coercive persuasion upon those parties from whom the person buys and to whom he sells which causes the buyers and the sellers to withdraw from business with that person through fear of loss and damage to themselves.

There was evidence of probative value to sustain a charge of secondary boycott, and while those acts were not of such great prominence, yet they successfully lent themselves to proving the charges in the petition.

The court concludes that the allegations of the petition have been proved with sufficient weight as causes this court to find that the prayer of the petition should be sustained ordering a permanent injunction as asked for therein.

Journal entry to be prepared to conform to the court's finding, saving exceptions to these defendants.

APPENDIX C.

Journal Entry of the Court of Common Pleas.

(Caption Omitted.)

(October 13, 1954.)

1. This cause came on to be heard upon the pleadings, the evidence and the arguments and briefs of counsel for the parties, and the issues having been duly tried, and the Court, after due deliberation, having made a finding herein and filed the same in which a decision in favor of the plaintiff and against the defendants is duly made, the Court finds on the issues joined in favor of the plaintiff and against the defendants and that the prayer of plaintiff's petition should be granted.

2. It is, therefore, Ordered and Decreed that the defendants and each of them and the officers and members of the defendant union and all persons acting with the defendants or in concert with the defendants be and they hereby are enjoined and restrained from:

(1) Picketing the stores and places of business of the plaintiff and from congregating, standing or having individuals congregate and stand on the premises where plaintiff's stores are located and from coercing, threatening, intimidating or turning aside against their will those who would go to the plaintiff's stores to sell, purchase or deliver goods, or any of the employees of plaintiff.

(2) Trespassing upon plaintiff's property.

(3) Compelling or inducing, or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of plaintiff's suppliers of merchandise to refuse or fail to sell and deliver merchandise to the plaintiff.

(4) Warning plaintiff's employees, agents or officers, or persons about to become such, that they will suffer or be likely to suffer any of the wrongs or injuries enjoined in this order, if they enter plaintiff's employment or continue therein.

(5) Aiding or advising any person to permit any of said wrongs or injuries.

The defendants shall pay the costs herein, for which sum judgment is awarded to plaintiff. Exceptions to the defendants to the finding and order are granted. Bond for appeal One Hundred Dollars ($100.00).

APPENDIX D.

Opinion of the Court of Appeals.

(Caption Omitted.)

Argued March 1, 1955.

Decided May 18, 1955.

APPEAL ON QUESTIONS OF LAW AND FACT.

HUNSICKER, *J.*

This is an appeal on questions of law and fact.

In this opinion, the appellee (plaintiff below) shall be designated as Fairlawn Meats, and the appellants (defendants below) shall be designated as the Union. The cause in this court, by agreement of the parties, was heard on the transcript of testimony taken in the trial court, together with the exhibits there introduced.

Fairlawn Meats operates three stores for the sale of meats and related products, to both wholesale and retail customers. Approximately 50 persons are employed, a minority of whom were members of the Union at the time of or during the occurrences which led to the controversy herein.

The Union, through its responsible offcers in this area, sought to organize the employees of Fairlawn Meats, but were unable to secure more than 18 members, although, at the time of the strike herein, there were less than 10 who actively interested themselves in the conduct of the strike.

After efforts to organize the employees failed, the management was approached with a request that it rec-

ognize the Union as sole bargaining agent of the employees, that they sign a contract that would require that all of their employees join the Union within 30 days, or, if they refused to do so, they would be discharged. Other provisions of the standard contract were proposed to the management, which, after many discussions, refused to enter into a contract with the Union. The evidence discloses that there was no discrimination in the employment or discharge of members of the Union, and that they could join or not join, so far as management was concerned.

The Union, when Fairlawn Meats refused to sign the contract, then bannered each place of business. Most of the employees who were members of the Union remained away from their jobs, although a few who first left their employment returned to work, and a few signed a statement of resignation from Fairlawn Meats.

At two of the stores, picketing was done by using land owned by, or under lease to, Fairlawn Meats; and, although the Union officials were notified of this fact, picketing continued over such lands.

The evidence also showed that Mr. Ekers, the manager and principal owner of Fairlawn Meats, was followed by Union officials when he went to some of the places where he purchased meat, and that, on one such instance, while at the place where he bought meat for resale, the air was let out of the tires of his automobile.

There is competent, credible evidence to show that, in order to enforce the demands of the union that Fairlawn Meats sign the standard contract requiring Fairlawn Meats to force the employees to join the Union or be discharged, at least two of the companies from whom meats were purchased for resale were threatened with imminent labor difficulties within their plants. As a result of these threats,

such companies refused to sell any meat products to Fairlawn Meats.

Fairlawn Meats filed an action in the Court of Common Pleas, asking for both a temporary and a permanent injunction. The Union denied that the state trial court had jurisdiction to entertain the action, and, without waiving its objection to jurisdiction, said that it was engaged in a bona fide labor dispute, denied that it engaged in any unfair labor practice, and asserted its right to picket the places of business of Fairlawn Meats. The cause is heard in this court de novo on the same pleadings filed in the trial court.

The first question that confronts this court is that concerning the jurisdiction of the state court to proceed in a determination of the issues herein.

The Congress of the United States, by the enactment of the National Labor Relations Act, intended to exercise the full scope of its authority to regulate unfair labor practices affecting interstate commerce. *Universal Car and Service Co. of Grand Rapids* v. *I.A.M. Lodge 1573*, 27 Labor Cases, C. C. H., par. 68,825.

"Affecting commerce" is defined in the Labor Management Relations Act. See Title 29, U. S. C. A., Sec. 152(7).

It is not necessary to discuss "jurisdictional yardsticks," as found in the regulations of the National Labor Relations Board (1 Labor Law Reporter, C. C. H., par. 1610, p. 1614), to determine whether the National Labor Relations Board will assume jurisdiction. It is not necessary to explore what areas in labor controversies are left open to the jurisdiction of the state courts. It is apparent that we have before us in the instant case a question of fact which may be stated as follows: Does the business of Fairlawn Meats, Inc., affect interstate commerce within the terms of the National Labor Managements Act? Or, may be stated: Do the facts herein show that Fairlawn Meats,

Inc., is an "industry affecting commerce" within the terms of the National Labor Managements Act?

Although it is true that the "jurisdictional yardstick" established by the regulations of the National Labor Relations Board may be helpful as evidence to determine the fact, it is not, in the case before us, the controlling feature.

The evidence herein clearly shows that the business of the plaintiff is purely of a local character. It is limited in the main to Akron and the surrounding area. The volume of business is not large for a city and county as populous as Akron and Summit County; it does not sell any of its products outside of the state of Ohio. Its purchases from out of this state, both direct and indirect, do not constitute a large portion of the products it offers for sale to the meat consuming public in Akron and Summit County.

We find, therefore, that there is no burden placed upon, or obstruction of, interstate commerce by any action taken by the parties to this case.

We determine, therefore, that the state courts have jurisdiction to hear the case.

We come now to the second question presented by the facts as shown by the transcript of testimony and the exhibits before us. Should the injunction be granted?

The case which pronounces the policy of the state of Ohio, with respect to organizational picketing, is *Crosby v. Rath*, 136 O. S. 352; and, while it was true that, in that case, there was much evidence of violence which accompanied the picketing, yet the court said, at page 355:

> "* * * The thing upon which the defendants are insisting is that the plaintiff discharge her employees unless they become members of one of the defendant unions. There is no reason or convincing authority sustaining the contention of the defendants that they have the right to engage in picketing or boycotting under such circumstances. That this must be the law

is clearly indicated by the intolerable and unexplainable predicament in which an employer might well find himself if picketed by two or more hostile unions with each one insisting that the employer discharge his employees unless they become members of that particular union alone."

The latest pronouncement by the Supreme Court of Ohio on the subject of the right to picket for organizational purposes is found in the case of *W. E. Anderson Sons Co. v. Local Union No. 311, etc., et al.*, 156 O. S. 541. The syllabi in that case, which establishes the law says:

"1. Where no unlawful purpose or object is involved, workers may by means of picketing or bannering announce their grievances to the public and thus persuade or seek to persuade prospective employees as well as prospective customers of the person against whom the picketing or bannering is directed from dealing with such person.

"2. A boycott may be defined in general terms as a concerted refrainment from business relations with another, or a concerted persuasion of third persons outside the combination to so refrain. It may be primary where there is a concerted refrainment from business relations with another, or by peaceful means a concerted inducement of others outside the combination to so refrain; or it may be secondary where there is not merely a concerted refrainment from business relations with the person against whom the boycott is directed or by peaceful means a concerted inducement of others outside the combination to so refrain, but an exercise of economic pressure upon such others to cause them to refrain from business relations with the person against whom the boycott is directed, through fear of loss or damage to themselves if they refuse to do so.

"3. Where a building trades union which has a labor dispute with one of several subcontractors on a construction job pickets and banners the construction site for the purpose of inducing the craft employees of

the general contractor to quit their employment in concert and thereby bring about a work stoppage on the entire construction job, all for the further purpose of influencing such general contractor to cause the discharge of the subcontractor with whom the union has the labor dispute such picketing and bannering constitute a secondary boycott.

"4. Picketing or bannering as a means of exercising the right of free speech will be afforded constitutional protection so long as it is lawfully conducted, but the right of free speech is predicated on the lawful exercise of such right, and if, through conspiracy or unlawful conduct, the result of its exercise by such means unlawfully injures another in his property rights, the guaranty ceases and the exercise of the claimed right by such means may be enjoined or prohibited.

"5. Picketing or bannering for the purpose of aiding or bringing about a secondary boycott may be enjoined."

This Court of Appeals has had occasion to pass on the right to picket for organizational purposes in the case of *Bean v. Local Union No. 698, et al.*, 94 O. App. 361, wherein we said:

"In the absence of a dispute between employer and employees, or between the union and the employer or employees, a labor union may not engage in organizational picketing, even though peaceful, for the purpose of bringing pressure to bear upon the employer to require his employees to join the union."

In the instant case, the principal object and purpose of bannering the places of business of Fairlawn Meats, Inc., was for the purpose of forcing the great majority of employees to join the Union. The resultant acts of the Union to secure their object, such as coercion of the suppliers of meats, and picketing on property under control of Fairlawn Meats, was the result of the failure of the Union to secure

the organization of the majority of the employees by peaceful means. This failure to convince the employees and the management was then followed by the picketing lines being established.

When we examine the acts of Congress, with respect to national labor relations (U. S. C. A., Title 29, Chapter 7, Section 151, *et seq.*), we find that Sec. 157 of the above act says:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities, for the purpose of collective bargaining or other mutual aid or protection * * *."

And Sec. 159 says, in part:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the *majority* of the employees * * * shall be the exclusive representatives of all the employees in such unit * * *." (Italics of the court.)

It is thus apparent that, even where jurisdiction does lodge in the National Labor Relations Board, there is an opportunity for the Union to appeal to that board, but, in the instant case without a majority of the employees of Fairlawn Meats, it would be a futile act, and the Union would lose all right to proceed in the manner it did in this case.

Although counsel for the Union insist that the National Labor Relations Board does have jurisdiction, it seems to us that the picketing engaged in herein was part of a plan to avoid an election by such board, and thus deprive the employees by majority vote to select or not to select bargaining representatives.

The declared policy of the United States, through the Labor Management Relations Act, *supra*, is to encourage

the practice and procedure of collective bargaining, and to protect the exercise by employees of full freedom of organization and selection of representatives of their own choosing.

It is the public policy of the State of Ohio, as declared in the cases cited, *supra*, that employers may not be picketed for the purpose of coercing their employees to join a union. The Supreme Court of the United States has indicated its approval of such a state policy as adopted by the legislature of the state of Washington, when it said, in *Building Service Employees International Union, etc., v. Gazzam*, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045, as follows:

> "In a state whose public policy is that employers shall not coerce their employees' choice of a bargaining representative, a state court injunction against peaceful picketing by a labor union for the particular purpose of compelling an employer to sign a contract which would coerce his employees' choice of a bargaining representative does not violate the right of free speech guaranteed by the First and Fourteenth Amendments of the Federal Constitution.
>
> "(a) Since picketing is more than speech and establishes a *locus in quo* that has far more potential for inducing action than the message the pickets convey, this Court upholds a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity.
>
> "(b) The picketing of the employer to compel him to coerce his employees' choice of a bargaining representative was unlawful because it was an attempt to induce a transgression of the State's policy against such coercion of employees."

We do not believe that there is a difference in the effectiveness of the policies so adopted, whether by legislative act or by declaration of the highest judicial authority in the state.

It is declared by Section 158 of the National Labor Managements Act to be an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" to employees by Section 157 of the Act (right of employees to organize or refrain from such activity). Where, then, as in this case, no election has been held under the federal regulations, and it is shown that many more than a bare majority have indicated a desire not to organize and join the Union, it would be an "unfair labor practice" to compel Fairlawn Meats to compel its employees to join a union contrary to their already expressed wishes.

It is the judgment of this court that, since the picketing herein was for organizational purposes only, and not to secure a settlement of grievances among the employees, and since the picketing in part was done on land owned by or under lease to Fairlawn Meats, and since the Union by threats and coercion instituted a secondary boycott against Fairlawn Meats, the picketing, although not accompanied by violence, was nevertheless unlawful under the announced policy in Ohio.

The injunction heretofore granted by the trial court shall be continued, and this court will enter the same order with respect to such injunction as was entered by the trial court.

Decree for the appellee, at the costs of appellants.

STEVENS, *P. J.*, and DOYLE, *J.*, concur.

APPENDIX E.

Journal Entry of the Court of Appeals.

Caption Omitted.

(June 4, 1955):

1. This cause came on for hearing in this Court, de novo, on questions of law and fact. By agreement of the parties, the cause was heard on the transcript of testimony taken in the trial court, together with the exhibits there introduced; the briefs and arguments of counsel for the parties, and the issues having been duly tried, and the Court, after due consideration and deliberation, having rendered its opinion in which a decision in favor of the plaintiff-appellee and against the defendants-appellants is duly made, the Court finds on the issues joined in favor of the plaintiff-appellee and against the defendants-appellants and that the prayer of the petition of plaintiff-appellee should be granted.

2. It is, therefore, Ordered and Decreed that the defendants and each of them and the officers, directors and members of the defendant union and all persons acting with the defendants or in concert with the defendants be and they hereby are enjoined and restrained from:

(1) Picketing the stores and places of business of the plaintiff and from congregating, standing or having individuals congregate and stand near the premises where plaintiff's stores are located and from coercing, threatening, intimidating or turning aside against their will those who would go to the plaintiff's store to sell, purchase or deliver goods, or any of the employees of the plaintiff.

(2) Trespassing upon plaintiff's property.

(3) Compelling or inducing, or attempting to compel or induce by threats, intimidation, persuasion, force or violence any of plaintiff's suppliers of merchandise to refuse or fail to sell and deliver merchandise to the plaintiff.

(4) Warning plaintiff's employees, agents or officers, or persons about to become such, or the families of either, that they will suffer or be likely to suffer any of the wrongs or injuries enjoined in this order, if they enter plaintiff's employment or continue therein.

(5) Aiding or advising any person to commit any of said wrongs or injuries.

The defendants-appellants shall pay the costs herein for which sum judgment is awarded plaintiff-appellee. To all of which the defendants-appellants except.

s/ OSCAR HUNSICKER,
Judge.

APPENDIX F.

No. 34542.

SUPREME COURT OF OHIO.

FAIRLAWN MEATS, INC.,

Appellee,

vs.

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 427, AFL, ET AL.,

Appellants.

Nov. 9, 1955.

Appeal from the Court of Appeals for Summit County.

Per Curiam.

It is ordered and adjudged, *sua sponte*, that this appeal as of right be, and the same hereby is, dismissed for the reason that no debatable constitutional question is involved.

Appeal dismissed.

WEYGANDT, *C. J.*, and MATTHIAS, HART, STEWART and BELL, *JJ.*, concur.